RAJ SATIVALE RAMACHANDRAN, RE

HIGH COURT MALAYA, KUALA LUMPUR
EUSOFF CHIN J
[PETITION NO. R8-18-344-89]
24 OCTOBER 1990

LEGAL PROFESSION: *Petition to be admitted as an advocate and solicitor - Attorney General objects on the ground that the petitioner at the material time while reading in the chambers - Had not been called to the English bar and therefore not a "qualified person" para. (b) of s. 3 of the Act - Whether exemption on the period of pupillage is absolutely within the power of the Bar Council - Exercise of that discretion - Sections 10 &15 Legal Profession Act 1976 (Act 166).*

This was a petition filed in the High Court for admission as an advocate and solicitor of the High Court Malaya.

A copy of the relevant notice had been sent to the learned Attorney General. Nordin Torji's application under s. 36(2) of the Legal Profession Act 1976 (the Act) was filed on the same day 23 October 1989 and served on the Bar Council, the State Bar Committee and though not required under the Law, on the Attorney General on 2 December 1989.

On 6 December 1989 the Attorney General wrote a letter to say that he had no objection to this application. The Bar Council and the Bar Committee also gave their consents to the Master's application under s. 36(2) of the Act. This application was allowed by the High Court on 7 December 1989.

The petition for admission of the petitioner as an advocate and solicitor of the High Court Malaya was fixed for hearing on 17 August 1990. The notice of hearing of the petition was served on the Attorney General on 7 August 1990. On 15 August 1990 the Attorney General filed a notice of objection to the petition under s. 16(2) of the Act.

The main objection by the Attorney General was that when the petitioner started reading in the chambers of Nordin Torji on 1 August 1990, the petitioner has not passed the Trinity Bar Examination 1989, he was only called to the English Bar on 6 February 1990, contrary to the definitiion of "qualified person" para. (b) of s. 3 of the Act.

He was therefore a qualified person effective on 6 February 1990 and up to the date fixed for his admission as an advocate and solicitor of the High Court he had only done seven and a half months period of pupillage as a qualified person. Under s. 12(2) of the Act he was required to do 9 months' pupillage.

Held:

[1] The giving of the exemption on the period of pupillage is absolutely within the power of the Bar Council to exercise, unless there is a specific application made to that effect, this Court is unable to interfere with the exercise of that discretion but have to accept it without question.

[Petitioner admitted as an advocate and solicitor of the High Court.]

Legislation referred to:
Legal Profession Act 1976, ss. 3, 10, 15, 12(2), 16(2), 36(2)

For the applicant - Anthony Fernandez; M/s. Nordin Torji & Yusoff Ahmed
For the Majlis Peguam - Hendon
For the Jawatankuasa Wilayah Persekutuan dan Selangor - Saseedharan Menon
For the Attorney General - Allaudeen

JUDGMENT

Eusoff Chin J:

The petitioner obtained a degree of Master of Laws on 14 July 1988 at the University of Wales, passed the Trinity Bar Exam 1989, and was called to the English Bar on 6 February 1990.

He started reading in the Chambers of Nordin bin Torji in the legal firm of Nordin Torji & Yusoff Ahmed since 1 August 1989. On 23 October 1989, the petitioner filed his petition in the High Court Malaya. A copy of the relevant notice that he had already filed such petition had been sent to the learned Attorney General. Nordin Torji's application under s. 36(2) of the Legal Profession Act 1976 (the Act) was filed on the same day (23 October 1989) and served on the Bar Council, the State Bar Committee and though not required under the law, on the Attorney General on 2 December 1989.

On 6 December 1989 the Attorney General wrote a letter to say that he had no objection to this application. The Bar Council and the Bar Committee also gave their consents to the Master's application under s. 36(2) of the Act. This application was allowed by the High Court on 7 December 1989.

This petition for admission of the petitioner as an advocate and solicitor of the High Court Malaya was fixed for hearing on 17 August 1990. The notice of hearing of the petition was served on the Attorney General on 7 August 1990. On 15 August 1990 the Attorney General filed a notice of objection to the petition under s. 16(2) of the Act.

The main objection by the Attorney General was that when the petitioner started reading in the Chambers of Nordin Torji on 1 August 1990, the petitioner was not a qualified person because though he had passed the Trinity Bar Examination 1989, he was only called to the English Bar on 6 February 1990, contrary to the definition of "qualified person" para. (b) of s. 3 of the Act. He was therefore a qualified person effective on 6 February 1990 and up to the date fixed for his admission as an advocate and solicitor of the High Court he had only done seven and a half months period of pupillage as a qualified person. Under s. 12(2) of the Act he was required to do 9 months' pupillage.

I had overruled the objection on the following grounds:

(1) The notice of objection under s. 16(2) of the Act was filed at the last moment on 15 August 1989 when the learned Attorney General well knew that the petition for admission was fixed for hearing of the petition for admission was served on him on 7 August 1990. Under s. 16(2) of the Act, the notice of objection must be filed at least 3 clear days before the date fixed for the hearing of the petition for admission. This s. 16(2) states:

> 16.(2) If the Attorney General, the Bar Council or any State Bar Committee intends to object to any petition, there shall be served on the petitioner and filed in the Registrar's Office, not less than **three clear days** or any shorter period as the Court may allow **before the date fixed for hearing the petition**, a notice of objection which shall set out in brief terms the ground of objection.

No application was made by the learned Attorney General for the shortening of the period of "three clear days", and therefore the objection was not legally or properly before the Court. As such I treated it that there was no objection before the Court.

(2) The petition for admission as an advocate and solicitor of the Master's application for the petitioner to appear before the Judge in chambers, etc., on his behalf under s. 36(2) of the Act, were filed on the same day, that is on 23 October 1989. The learned Attorney General had given his consent in writing to the application under s. 36(2) of the Act, not withstanding that at that time the petitioner had not been called to the English Bar.

(3) Puan Hendon, representing the Bar Council informed the Court that the Bar Council had given the necessary exemption to the petitioner under s. 13(3) of the Act to enable him to be admitted as advocate and solicitor. Section 13(3) states:

> 13. (3) The Bar Council may, in its sole discretion, exempt a qualified person from any period up to six months' pupillage upon application made to it supported by satisfactory evidence that:
>
> (a) there are special circumstances justifying a shortening of the period of pupillage; or
>
> (b) the applicant has for a period of not less than six months been a pupil or read in the chambers of a legal petitioner in active private practice, in the Commonwealth, of more than seven years' standing: or
>
> (c) the applicant is an articled clerk in Malaysia; or
>
> (d) the applicant has been engaged in active practice as a legal practitioner by whatever name called in any part of the Commonwealth for a period of not less than six months.

Since the giving of the exemption on the period of pupillage is absolutely within the power of the Bar Council to exercise, unless there is a specific application made to that effect, I do not, and am unable to interfere with the exercise of that discretion but have to accept it without question.

Since the petitioner had complied with the provisions of the Act, I exercised my discretion under s. 10 of the Act and admitted the petitioner as an advocate and solicitor of the High Court.

Also found at [1992] 2 CLJ 1072